

APR 02 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**RENE DE LA TORRE-MEDINA,**

Petitioner,

v.

**ERIC H. HOLDER, Jr., Attorney  
General,**

Respondent.

No. 06-73297

Agency No. A074-227-009

**MEMORANDUM**\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted March 11, 2009  
San Francisco, California

Before: **KOZINSKI**, Chief Judge, **NOONAN**, Circuit Judge and  
**EDMUNDS**,\*\* District Judge.

The BIA correctly found that petitioner could have been sentenced to a year  
in jail for his conviction under Cal. Penal Code § 245(a)(1), as required by 8  
U.S.C. § 1227(a)(2)(A)(i). See Cal. Penal Code § 19 (prescribing the available

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The Honorable Nancy G. Edmunds, United States District Judge for  
the Eastern District of Michigan, sitting by designation.

punishments for misdemeanors “[e]xcept in cases where a different punishment is prescribed by any law of this state”); Cal. Penal Code § 245(a)(1) (authorizing punishment of up to one year in county jail).

However, petitioner challenged before the IJ whether his conviction was for a crime involving moral turpitude, and the BIA issued a Burbano affirmance of the IJ’s decision. Petitioner thus exhausted his administrative remedies. See Arreguin–Moreno v. Mukasey, 511 F.3d 1229, 1232 (9th Cir. 2008). We therefore remand to the BIA to reconsider, in light of Marmolejo–Campos v. Holder, 2009 WL 530950 (9th Cir. Mar. 4, 2009) and In re Silva–Trevino, 24 I. & N. Dec. 687 (A.G. 2008), whether petitioner was convicted of a CIMT.

**PETITION GRANTED.**